

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

2004 MAY 21 PM 12:07

U.S. DISTRICT COURT  
TAMPA, FLORIDA

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT

**DEFENDANT GHASSAN BALLUT'S OBJECTION AND RESPONSE TO  
GOVERNMENT'S MOTION FOR MODIFICATION OF RULING ON SCIENTER**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, hereby responds to the Government's Motion for Modification of Ruling on Scienter under 18 U.S.C. § 2339B(a)(1) and the Memorandum of Law in support of the Motion.

The Defendant objects generally to the Government's Motion for Modification. The Defendant would also object to and contend with certain specific allegations and arguments made by the Government in its Motion and Memorandum of Law.

The Government contends that there are simply two operative elements contained in 18 U.S.C. § 2339B(a)(1) to which the word "knowingly" applies. According to the Government, these two elements are (1) providing an item or service and (2) the designation of an organization as a Foreign Terrorist Organization. The Government is overlooking a third operative element, which is the element of "material support or resources" as defined at 18 U.S.C. § 2339A(b). The Defendant submits that the word "knowingly" as used in § 2339B(1)(a) applies to this third operative element as well, and that the application of the word "knowingly" to all three elements results in the legal necessity for the scienter requirement.

The definition of "material support or resources" refers to a variety of physical assets of

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determinable value that can be applied to a particular practical purpose. Because the Foreign Terrorist Organization designation is applied by the Government to an organization whose avowed purpose is to threaten the national security and foreign policy of the United States by terror, the valuable assets would necessarily be applied as services to or benefits for this avowed purpose. Otherwise, the organization would not be designated as such by the Government. For a person to act knowingly as to all three operative elements in § 2339B(1)(a), the person must be found to have known that the “material support or resources” were physical assets of determinable value that would be applied to the purpose of terror. That person would necessarily have to have the specific intent that these assets would apply to this purpose. Without this specific intent, the act would be innocent, given the purposes for which § 2339B(1)(a) was drafted. Thus, there is a clear scienter requirement within § 2339B(1)(a), which the Government is required to prove.

The Defendant further contends that § 2339B(1)(a) does not impute guilt on the basis of association with others. Any association by an individual with an organization is not merely a matter of physical attendance or presence but would necessarily involve an exchange of physical assets of determinable value. If this exchange is with innocent purpose unrelated to the recognized threat, then the criminalization of the exchange does raise serious due process and First Amendment concerns.

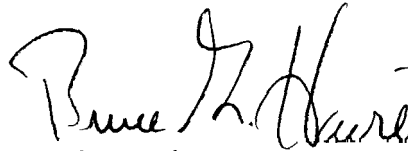
The Government also suggests that imposing a scienter requirement in § 2339B(1)(a) would make 18 U.S.C. § 2339A(a) redundant. It is clear, however, that § 2339A(a) and § 2339B(1)(a) each has elements separate from the other, including the enumeration of specific offenses in § 2339A(a) and the jurisdictional element, where § 2339B(1)(a) jurisdiction is

“extraterritorial” as opposed to § 2339A(a) jurisdiction, which is domestic. 18 U.S.C. § 2339B(d). Applying the scienter requirement in both sections does not make them redundant.

The Defendant would further adopt the arguments of his co-defendants against the Government’s Motion for Modification of Ruling on Scienter, to the extent that such arguments are not contrary to the Defendant’s interests.

WHEREFORE, the Defendant requests this Honorable Court to deny the Government’s Motion for Modification of Ruling on Scienter under 18 U.S.C. § 2339B(a)(1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce G. Howie". The signature is fluid and cursive, with the first name "Bruce" being more prominent.

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**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

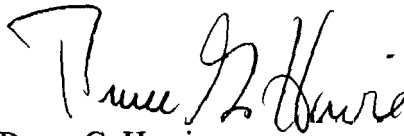
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